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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte SEAN S. LEE

Appeal 2015-004337
Application 11/353,584
Technology Center 2400

Before: THU A. DANG, ELENI MANTIS MERCADER, and JOHN A. EVANS, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

Appellant appeals under 35 U.S.C. § 134 from a rejection of claims 1–4, 8–10, 13–20, and 22–25. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

THE INVENTION

Appellant's claimed invention is directed to a controller 60 coupled to the non-volatile memory 74 and a tuner 64. The controller sets a time window, receives information from the tuner 64, and stores the information in the non-volatile memory 74 when the information is within the time window. *See* Fig. 2; Spec. para. 30.

Claim 1, reproduced below, is illustrative of the claimed subject matter:

> 1. A receiving unit comprising:
> a tuner;
> a dynamic memory;
> a non-volatile memory; and
> a controller coupled to the dynamic memory, the non-volatile memory and the tuner, said controller setting an airing time window, receiving program guide data from the tuner, storing program guide data for a program in the dynamic memory, and writing the program guide data from the dynamic memory to the non-volatile memory when the program guide data of the dynamic memory indicates the program airs within the time window and when the program guide data is not already stored in the non-volatile memory.

REFERENCES

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Pietraszak	US 6,990,677 B1	Jan. 24, 2006

Rodriguez	US 7,120,922 B2	Oct. 10, 2006
Aratani	US 7,260,828 B2	Aug. 21, 2007
Ficco	US 2002/0188956 A1	Dec. 12, 2002
Matsumoto	US 2004/0075776 A1	Apr. 22, 2004

REJECTIONS

The Examiner made the following rejections:

Claims 1–4, 20, 24, and 25 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Aratani in view of Pietraszak.

Claims 10 and 14 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Aratani in view of Pietraszak and further in view of Matsumoto.

Claim 15–19 stands rejected under 35 U.S.C § 103(a) as being unpatentable over Aratani in view of Pietraszak in view of Ficco and further in view of Rodriguez.

Claims 22 and 23 stand rejected under 35 U.S.C § 103(a) as being unpatentable over Aratani in view of Pietraszak as applied to claim 20 above, and further in view of Matsumoto.

ISSUE

The pivotal issue is whether the Examiner erred in finding that the combination of Aratani and Pietraszak teaches or suggests the limitation of

> a controller coupled to the dynamic memory, the non-volatile memory and the tuner, said controller setting an airing time window, receiving program guide data from the tuner, storing program guide data for a program in the dynamic memory, and writing the program guide data from the dynamic memory to the non-volatile memory when the program guide data of the dynamic memory indicates the program airs within the time

> window and when the program guide data is not already stored in the non-volatile memory.
>
> as recited in claim 1.

ANALYSIS

We adopt the Examiner's findings in the Answer and Final Action and we add the following primarily for emphasis. We note that if Appellant failed to present arguments on a particular rejection, we will not unilaterally review those uncontested aspects of the rejection. *See Ex parte Frye*, 94 USPQ2d 1072, 1075 (BPAI 2010) (precedential); *Hyatt v. Dudas*, 551 F.3d 1307, 1313–14 (Fed. Cir. 2008) (The Board may treat arguments Appellants failed to make for a given ground of rejection as waived).

Appellant argues that Aratani mentions random access memory (RAM), but is completely silent as to the RAM being dynamic memory (App. Br. 7). Appellant notes that simple RAM is not the same as dynamic memory, and asserts that the Examiner has ignored this distinction (App. Br. 7). Appellant notes that dynamic RAM (DRAM) is one type of RAM, but Aratani is silent as to its RAM being DRAM or another type of dynamic memory (App. Br. 7).

Appellant further argues that Pietraszak in no way describes the EPG loader 60 as including dynamic memory (App. Br. 7). According to Appellant, Pietraszak does not even include the word dynamic (App. Br. 7). Moreover, Pietraszak is silent as to the EPG loader 60 including any type of memory as alleged by the Examiner (App. Br. 7).

At the outset we note that disputed claim 1 recites "dynamic memory" (*see* claim 1) and Appellant's Specification discloses "*a dynamic memory 72*

such as RAM" (Spec. para. 23, emphasis added). Thus, we see no error in the Examiner's mapping of RAM as a dynamic memory. Under the broadest reasonable interpretation of the terms, we interpret "dynamic memory" as recited in claim 1, in light of the Specification, as a memory which "acts as a buffer" (*see* Spec. para. 30 stating "the dynamic memory may act as a buffer for the program guide information"). We further note that there is no *ipsissimis verbis* test for determining whether a reference discloses a claim element, *i.e.*, identity of terminology is not required. *In re Bond*, 910 F.2d 831, 832 (Fed. Cir. 1990). In other words, just because the reference does not disclose the term "dynamic" it does not mean that it does not teach or suggest dynamic memory. We further note that the claim only recites "dynamic memory" and does not recite the term DRAM (*see* claim 1).

Accordingly, we agree with the Examiner's finding that Aratani's system control unit 18 includes a RAM, which is used as a work memory (col. 5, ll. 41–43; Ans. 3), and system control unit 18 *temporarily stores* EPG data to facilitate comparing version data of the received EPG data with EPG data stored on hard disk 123 (col. 3, ll. 45–48; Ans. 3). Thus, Aratani discloses a dynamic memory in the form of RAM within system control unit 18 (Ans. 3) consistent with Appellant's own Specification (Spec. para. 30).

We further agree with the Examiner that Pietraszak teaches EPG services 40 of device 20 having pluggable modules EPG loaders 60, EPG writer 43, storage 42, and EPG control 41 (col. 7, ll. 63–66; Ans. 3). The EPG loader 60 receives EPG data from a specified EPG data provider (col. 8, ll. 1–4; Ans. 3). The EPG data that is written to storage 42 by EPG writer 43 must first be held at one of the EPG loader 60 as EPG writer 43 processes EPG data from each loader 60 (Ans. 3–4). Thus, given the broadest reasonable interpretation above, we agree with the Examiner that the EPG

loader 60 is also a "dynamic memory" as it only collects and stores received EPG data for a short period before overwriting data (Ans. 4).

Appellant also argues that neither Aratani nor Pietraszak, nor their combination, teaches or suggests a controller storing program guide data for a program in the dynamic memory, setting an airing time window, and writing the program guide data from the dynamic memory to the non-volatile memory when the program guide data of the dynamic memory indicates the program airs within the time window (App. Br. 8).

Furthermore, Appellant argues that Pietraszak is silent as to writing program guide data from dynamic memory to storage 42 when the program guide data of the dynamic memory indicates that the program airs within the time window (App. Br. 9). Appellant also argues that Pietraszak is silent as to storage 42 being non-volatile memory (App. Br. 9).

We do not agree. We agree with the Examiner's findings that Pietraszak teaches or suggests a controller (i.e., EPG writer 43 is responsible for storing and enforcing the scaling of the EPG data; col. 8, ll. 11–18) setting a time window (i.e., a device application developer or a user may choose a time period of 2 days to conserve memory even if the EPG data source provides a 5 day block of EPG data; col. 3, ll. 5–8) and storing the information in the non-volatile memory (i.e., storage 42 is a database containing EPG data) from the dynamic memory when the information is within the time window (i.e., EPG writer 43 is responsible for storing and enforcing the scaling of the EPG data, such that if EPG loader 60 provides EPG writer 43 with EPG data that is not within the 2 day set time period, EPG writer 43 will prevent the EPG data from being stored on storage 42) (col. 8, ll. 11–23; col. 6, ll. 23–33; col. 6, l. 57 to col. 7, l. 39; and col. 3, ll. 2–26; Ans. 5). We further note that Pietraszak's lack of description of

storage 42 as non-volatile memory is of no merit since identity of terminology is not required. *In re Bond*, 910 F.2d at 832.

On this record, we affirm the Examiner's rejection of claim 1 and for the same reasons the Examiner's rejection of claims 2–4, 8–10, 13–20, and 22–25.

CONCLUSIONS

The Examiner did not err in finding that the combination of Aratani and Pietraszak teaches or suggests the limitation of

> a controller coupled to the dynamic memory, the non-volatile memory and the tuner, said controller setting an airing time window, receiving program guide data from the tuner, storing program guide data for a program in the dynamic memory, and writing the program guide data from the dynamic memory to the non-volatile memory when the program guide data of the dynamic memory indicates the program airs within the time window and when the program guide data is not already stored in the non-volatile memory.
>
> as recited in claim 1.

DECISION

For the above reasons, the Examiner's rejection of claims 1–4, 8–10, 13–20, and 22–25 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED